CONVERSION OF PARTNERSHIP REALTY INTO PERSONALTY. — However doubtful its right at law, a firm may in equity be the owner of realty, the legal title being held by one or more partners in trust for the firm.[1] On the basis of this equitable recognition of the firm as an entity, it would seem that the character of a partner's right in firm realty is dependent, not upon any fiction of conversion of realty into personalty, but rather upon a determination whether the firm owned the entire title, or had merely, during the firm existence, the use of the property with a power of sale for firm purposes.[2] In the former case, the partner's right is not to any specific property, but merely to an accounting; and being thus a mere chose in action, it should be governed in its descent and transfer by the rules applicable to personalty.[3] But if the firm has only the use of the property, the individual partner's interest in remainder in the unconsumed realty is a right in realty, and must be governed in its descent and transfer by the rules applicable to real estate.[4]

The courts have, however, worked out the rights of the partners and of their representatives on the basis of an implied trust to sell for firm purposes. In England, in the absence of agreement to the contrary, there is an implied agreement that all property shall be sold in winding up the firm. This is held in equity to deprive the partner of any real interest in land owned by the firm, regardless of the state of the legal title, and is generally spoken of as "out and out conversion."[5] In this country, the presumed agreement is that the realty shall be sold only so far as may be necessary for firm purposes.[6] There are two views as to the effect of this. (1) The partner has no specific interest in firm realty until it is determined that the land is not needed for firm purposes.[7] (2) The land remains that of the partners as individuals, but may be sold so far as is necessary to satisfy firm needs.[8] Either of these views sustains the holding of a recent case that there may be partition of firm realty not needed in the settlement of firm accounts, and that the heirs or devisees of a deceased partner may bring the bill. *Schleissner* v. *Goldsticker*, 120 N. Y. Supp. 333 (Sup. Ct., App. Div.). As to the right to demand an exoneration of the firm realty by the personalty, there is some conflict.[9]

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[1] Hartnett *v.* Stillwell, 121 Ga. 386; Henry *v.* Anderson, 77 Ind. 361; Shanks *v.* Klein, 104 U. S. 18.

[2] *Cf.* Beale's note, PARSONS ON PARTNERSHIP, 4 ed., 360; Smith *v.* Smith, 5 Ves. 188.

[3] See LINDLEY, PARTNERSHIP, 7 ed., 381; 22 HARV. L. REV. 400. *Cf.* Menagh *v.* Whitwell, 52 N. Y. 147.

[4] See Rowley *v.* Adams, 7 Beav. 548; Balmain *v.* Shore, 9 Ves. 500.

[5] Darby *v.* Darby, 3 Drew. 495. The Partnership Act of 1890 (53 & 54 Vict., c. 39, § 22, provides that, "where land or any heritable interest therein has become partnership property, it shall, unless the contrary intention appears, be treated as between the partners," and also as between the heirs and executors of a deceased partner, as personal estate.

[6] Shearer *v.* Shearer, 98 Mass. 107. For examples of agreements between the parties which were held to replace the presumed agreement, see Patrick *v.* Patrick, 71 N. J. Eq. 347; Hughes *v.* Allen, 66 Vt. 95.

[7] Woodward-Holmes Co. *v.* Nudd, 58 Minn. 236; Coolidge *v.* Burke, 69 Ark. 237. In the latter case it was held that realty, bought with firm personalty by the surviving partner in the course of winding up the firm, descended as realty.

[8] Shearer *v.* Shearer, *supra*. See Young *v.* Thrasher, 115 Mo. 222.

[9] See Logan *v.* Greenlaw, 25 Fed. 299 (no exoneration); Foster's Appeal, 74 Pa. St. 391 (exoneration); Walling *v.* Burgess, 122 Ind. 299 (exoneration).

While almost all American courts agree that this claim to the residuary realty descends as realty, many refuse to recognize it as a present right in real estate,[10] and hold that a partner's interest in a firm owning realty may be transferred as personalty,[11] that the wives have no inchoate right of dower,[12] and that judgments against the individual partners do not affect their interest in firm realty.[13] In explaining these decisions the courts have advanced the doctrine that the partner's interest is personalty during the firm's existence, and is not reconverted into realty until it is determined that it will be unnecessary to sell the land in winding up the firm. Such a result seems opposed to the cases which decide that the nature of a *cestui's* right for purposes of descent is determined at his decease.[14] Furthermore, it is of doubtful propriety where no writing evidences such an agreement.[15]

SUIT UNDER FOREIGN STATUTE GIVING THE "PERSONAL REPRESENTATIVE" THE RIGHT TO RECOVER FOR DEATH BY WRONGFUL ACT. — It is established by the weight of authority that, as a general rule, suit may be brought in a foreign jurisdiction upon a cause of action arising under a statute giving damage for death by wrongful act.[1] As the obligation sued on is raised wholly by the statute of the place where the injury occurred, that statute governs as to the party to bring suit.[2] When the statute gives the right of action to the "personal representative" of the deceased, inasmuch as there may be different administrators in different jurisdictions, a further question arises as to which administrator should sue.

Perhaps the most probable intent of a legislature in using the phrase "personal representative" is to designate the representative appointed in its own state; that is, in the *locus delicti*, since such a statute applies only to death caused within the jurisdiction.[3] Certainly no case has arisen in which a court, in construing its own statute, has so interpreted it as to deny a right of action to the administrator of the *locus delicti;*[4] and in this, as in other cases of statutory interpretation, the construction given to a statute by the courts of the jurisdiction in which the statute was passed should be

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[10] But see Shearer *v.* Shearer, *supra;* Hewitt *v.* Rankin, 41 Ia. 35.

[11] Greenwood *v.* Marvin, 111 N. Y. 423; Morril *v.* Colehour, 82 Ill. 618; Marsh *v.* Davis, 33 Kan. 326.

[12] Woodward-Holmes Co. *v.* Nudd, 58 Minn. 236.

[13] Meily *v.* Wood, 71 Pa. St. 488. But see Hewitt *v.* Rankin, *supra.*

[14] See *In re* Raw, 26 Ch. D. 601; Carr *v.* Collins, 7 Jur. 165; Harding *v.* Trotter, 1 W. R. 502. See PARSONS, PARTNERSHIP, 4 ed., 361 n; 23 HARV. L. REV. 70. It cannot properly be said that the surviving partner has an uncontrolled discretion as to the sale of firm realty. See Young *v.* Thrasher, 115 Mo. 222.

[15] The courts, however, are generally not troubled by the absence of a writing. See Marsh *v.* Davis, *supra;* Buckley *v.* Doig, 188 N. Y. 238.

[1] Texas & Pacific Ry. Co. *v.* Cox, 145 U. S. 593. See 3 HARV. L. REV. 116–125; 16 HARV. L. REV. 63.

[2] Usher *v.* West Jersey R. R. Co., 126 Pa. St. 206. But see Stewart *v.* Baltimore & Ohio R. R. Co., 168 U. S. 445. The latter case is criticised in Williams *v.* Camden Interstate Ry. Co., 138 Fed. 571.

[3] Hall *v.* Southern Ry. Co., 146 N. C. 345.

[4] In some cases it is held that an administrator may be appointed in the *locus delicti* for the purposes of bringing suit under these statutes even though the deceased has left no assets in that jurisdiction. *In re* Mayo's Estate, 60 S. C. 401.